

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION)

TERRI N. WHITE, et al.,
Plaintiffs,

v.

EXPERIAN INFORMATION
SOLUTIONS, INC.,

Defendant.

Case No. SACV05-1070 DOC (MLGx)
(Lead Case)

**ORDER (1) GRANTING PRELIMINARY
APPROVAL TO PROPOSED CLASS
ACTION SETTLEMENT;
(2) CONDITIONALLY CERTIFYING
SETTLEMENT CLASS; (3) APPROVING
CLASS NOTICE; (4) APPOINTING
CLASS COUNSEL; AND (5)
SCHEDULING FINAL APPROVAL
HEARING DATE AND RELATED DATES**

and Related Cases:

05-cv-01073-DOC (MLGx)
05-cv-7821-DOC (MLGx)
06-cv-0392-DOC (MLGx)
05-cv-1172-DOC (MLGx)
06-cv-5060-DOC (MLGx)

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1 **I. INTRODUCTION**

2 Plaintiffs Jose Hernandez, Robert Randall, Bertram Robison, and
3 Kathryn Pike (collectively, "Plaintiffs") have submitted for the Court's preliminary
4 approval a proposed nationwide class action settlement of the claims for monetary
5 relief, against all Defendants ("Settlement").¹ Previously, in August 2008, this
6 Court approved the settlement of the injunctive relief claims raised in these *White v.*
7 *Experian* related cases.² Now the Plaintiffs seek approval of the proposed
8 Settlement that resolves all monetary damages claims in the Litigation.

9 Having reviewed the Settlement Agreement and Release (a copy of
10 which is attached hereto as Exhibit 1, herein "Settlement Agreement"), Plaintiffs'
11 Memorandum In Support of Motion for Preliminary Approval of Settlement,
12 Defendants' joinder thereto, and based on its extensive familiarity with this
13 Litigation, the Court now FINDS, CONCLUDES, and ORDERS as follows:

14 The proposed Settlement satisfies and exceeds the preliminary
15 approval criteria that a settlement be "fair, reasonable, and adequate." Fed. R. Civ.
16 P. 23(e). Accordingly, as set forth herein, the Court: (a) grants preliminary
17 approval of the Settlement; (b) provisionally certifies the proposed 23(b)(3)
18 Settlement Class; (c) appoints 23(b)(3) Settlement Class Representatives and Class
19 Counsel; (d) approves the proposed Notice Plan and forms of Notice; and (e) sets
20 the final fairness hearing for 8:30 a.m. on November 9, 2009. **Any and all**
21 **objections to the substantive merits of the settlement will be heard at the final**

22
23
24 ¹ Defendants are: Experian Information Solutions, Inc. ("Experian"), Equifax
Information Services, LLC ("Equifax"), and TransUnion LLC ("TransUnion")
(together, "Defendants").

25 ² *Terri N. White, et al. v. Experian Information Solutions, Inc.*, Case No. 05-cv-
1070 (Lead Case number); *Terri N. White, et al. v. Equifax Information Services*
26 *LLC*, Case No. 05-cv-7821; *Terri N. White, et al. v. TransUnion LLC*, 05-cv-1073;
27 *Jose Hernandez v. Equifax Information Services, LLC, et al.*, Case No. 06-cv-3924;
Jose L. Acosta et al., v. TransUnion LLC, et al., Case No. 06-cv-5060; and *Kathryn*
28 *L. Pike v. Equifax Information Services, LLC*, Case No. 05-cv-1172. These cases
are collectively referred to herein as the "Litigation."

1 fairness hearing at which time the Court will make a renewed determination
2 as to the fairness, reasonableness, and adequacy of the settlement.

3 **II. BACKGROUND**

4 The Litigation has been pending before this Court since the Fall of
5 2005. On or about November 2, 2005, plaintiffs in *White* filed separate actions in
6 this District against each of the Defendants. Prior to the filing of *White*, on October
7 3, 2005, Jose Hernandez filed a similar action against Defendants in the Northern
8 District of California. *Hernandez* was then transferred to this Court, and, on
9 August 11, 2006, was consolidated with *White* via three separate Second Amended
10 Consolidated Class Action Complaints, one against each Defendant (herein,
11 “*White/Hernandez*”).³

12 Subsequently, *White/Hernandez* was related to two other actions,
13 *Acosta* and *Pike*. Jose L. Acosta, Jr., had previously filed an action in California
14 Superior Court against TransUnion on May 12, 2003, and on August 14, 2006, he
15 filed again in this District.⁴ On October 14, 2005, Kathryn Pike had filed an action
16 in California Superior Court against Equifax, which was later removed to this
17 District and transferred to this Court as related to *White/Hernandez*.

18 As a result, each of these cases has been either filed, transferred, or
19 removed such that they are in the Central District before this Court.

20 Plaintiffs allege that each Defendant recklessly or negligently violated
21 and, until enjoined by this Court, continued to violate the Fair Credit Reporting Act
22 (“FCRA”), 15 U.S.C. §§ 1681 *et seq.*, by failing to maintain reasonable procedures
23 to assure the accurate reporting of debts that have been discharged in bankruptcy.

24 Plaintiffs contend that Defendants’ procedures, by which Defendants relied

25 ³ The remaining named plaintiffs under the *White/Hernandez* Second Amended
26 Complaints are Robert Radcliffe, Chester Carter, Maria Falcon, Clifton C. Seale,
27 III, and Jose Hernandez. Plaintiffs Terri N. White, Alex K. Gidi, and Milagros
28 Gabrillo were dismissed by court order on October 19, 2007.

⁴ The remaining named plaintiffs in *Acosta* are Robert Randall and Bertram
Robison. Plaintiff Acosta was dismissed from the federal court action and has
dismissed his state court action.

1 primarily on creditors and public record vendors to report the discharged status of
2 debts and judgments, were unreasonable procedures under the FCRA. They further
3 allege that Defendants failed to employ reasonable reinvestigation procedures
4 pursuant to the FCRA. Plaintiffs assert claims for (i) willful and/or negligent
5 violation of Section 1681e(b) of the FCRA and its California counterpart, Cal. Civ.
6 Code Section 1785.14(b), for failure to maintain reasonable procedures to assure
7 maximum possible accuracy; (ii) willful and/or negligent violation of Section 1681i
8 of the FCRA and its California counterpart, Cal. Civ. Code Section 1785.16, for
9 failure to reasonably investigate consumer disputes regarding the status of the
10 discharged accounts; and (iii) violation of California's Unfair Competition law,
11 Bus. & Prof. Code section 17200, *et seq.*

12 In or around September 2006, Defendants answered the various
13 Second Amended Complaints, denying the allegations therein, denying that the
14 actions are suitable for certification pursuant to Federal Rule of Civil Procedure 23,
15 and asserting numerous affirmative defenses that Defendants contend are
16 meritorious.

17 Plaintiffs in the Litigation have undertaken substantial investigation,
18 fact-gathering, and formal discovery. Discovery efforts included review of tens of
19 thousands of pages of documents, retention and consultation of numerous experts in
20 the fields of credit reporting and consumer bankruptcies, interviews with numerous
21 consumers, and review of thousands of consumer credit reports. Plaintiffs have
22 taken or defended forty depositions, produced over 50,000 pages of documents, and
23 reviewed over 40,000 pages of documents produced by the Defendants. They have
24 retained several experts who have filed numerous declarations with the Court.
25 Moreover, the parties have engaged in extensive motion practice before reaching
26 the Settlement Agreement. They have attended several status conferences and
27 hearings on class certification, settlement approval, and summary judgment. This
28 Court has presided over the hearings and executed no fewer than thirty-seven

1 minute entries, entered at least fifty signed orders, and authored four published
2 opinions.

3 From on or about August 15, 2007, to February 5, 2009, the Parties
4 conducted arms-length, contentious, lengthy, and complicated negotiations (with
5 the participation of Defendants' insurance carriers). These efforts included seven
6 formal mediation sessions with a JAMS mediator, the Hon. Lourdes Baird (Ret.),
7 regarding injunctive and monetary relief, and five formal mediation sessions with
8 mediator Randall Wulff regarding monetary relief (including a mandatory
9 settlement conference at the Court on February 5, 2009), as well as several
10 additional in-person or telephonic sessions with both mediators.

11 On or about April 3, 2008, the parties entered into the Injunctive Relief
12 Settlement Agreement, in which Defendants agreed to retroactively update the
13 credit files of 23(b)(2) Settlement Class members to reflect the discharge of certain
14 categories of pre-bankruptcy civil judgments and tradelines. Defendants also
15 agreed to adopt new procedures for the update of certain pre-bankruptcy civil
16 judgments and tradelines when a public record entry of the bankruptcy has been
17 added to a consumer's file. On August 19, 2008, the Court approved these new
18 procedures, found them to be reasonable under the FCRA, and entered an Approval
19 Order Regarding Settlement and Release for the Injunctive Relief Settlement
20 Agreement (Dkt. 290).

21 On January 26, 2009, the Parties appeared for a hearing on Plaintiffs'
22 Motion for Class Certification and, prior to the scheduled hearing, the Court issued
23 a tentative ruling denying Plaintiffs' Motion for Class Certification pursuant to Fed.
24 R. Civ. P. 23(b)(3).

25 The Parties and Defendants' insurance carriers then participated in a
26 mandatory settlement conference at the Court on February 5, 2009. At that
27 conference, Plaintiffs, Equifax, and Experian reached agreement as to the principal
28 terms of a settlement of all of Plaintiffs' claims in the Litigation for monetary

1 damages, including statutory and punitive damages, as reflected in the Settlement
2 Agreement. TransUnion agreed to the settlement terms on February 18, 2009.

3 **III. THE SETTLEMENT BENEFITS**

4 The Settlement establishes a \$45 million Settlement Fund that will be
5 used to pay benefits to eligible Class members who have submitted qualifying
6 claims, as well as pay notice costs and attorneys' fees and costs. The Settlement is
7 directed at providing benefits to those Class members who can confirm they believe
8 they suffered harm from errors in their credit reports regarding debt discharged in
9 bankruptcy, though it still provides some benefit for those Class members who
10 cannot confirm actual harm but who are relinquishing their rights to statutory
11 damages when they cannot make a showing of harm.

12 The Settlement Agreement and Release ("Settlement Agreement") will
13 resolve all of the claims of the Plaintiffs and all members of the Settlement Class.
14 Set forth below is a summary which paraphrases the key terms of the Settlement
15 Agreement.⁵

16 **A. Settlement Class**

17 The "23(b)(3) Settlement Class" includes all Consumers who have
18 received an order of discharge pursuant to Chapter 7 of the United States
19 Bankruptcy Code and who, any time between and including March 15, 2002, and
20 May 11, 2009 (or, for California residents in the case of TransUnion, any time
21 between and including May 12, 2001 and May 11, 2009), have been the subject of a
22 Post-bankruptcy Credit Report issued by a Defendant that contained possible errors
23 regarding debts discharged in bankruptcy.

24 **1. Identifying 23(b)(3) Class Members**

25 Defendants have agreed to provide the Settlement Administrator with a
26 list of identified 23(b)(3) Settlement Class members by using commercially

27 ⁵ References to Settlement terms and definitions follow those in the Settlement
28 Agreement, attached as Exhibit 1.

1 reasonable procedures to search a selection of their archived files to identify each
2 consumer who: (i) was the subject of a credit report issued by the Defendant after
3 their Chapter 7 bankruptcy discharge and on or after March 15, 2002 (or, for
4 California residents in the case of TransUnion, after May 12, 2001); and (ii) has at
5 least one tradeline that fits into one of the four different categories of qualifying
6 tradelines corresponding to the manner in which Defendants report on them: civil
7 judgments, installment loans, credit card loans (revolving credit), and collection
8 accounts. Settlement Agreement § 4.1(a).

9 The first category from which a consumer can have a qualifying
10 tradeline is pre-bankruptcy civil judgments that do not reflect a Chapter 7
11 bankruptcy account status and that do not indicate they were paid, satisfied,
12 vacated, or included in bankruptcy, or were non-dischargeable (*e.g.*, judgments
13 obtained by governmental taxing authorities or relating to domestic support
14 obligations) or tax liens. *Id.* § 4.1(a)(ii)(A).

15 The second category is pre-bankruptcy installment or mortgage loans
16 that do not reflect a Chapter 7 bankruptcy account status and that do not have an
17 indication that the account is closed, voluntarily surrendered, subject to a deed in
18 lieu of foreclosure, or an indication of a specific reporting code type from the
19 standardized reporting protocol known as the Metro 2 format that would make them
20 non-dischargeable (such as, for example, student loan debts, family support
21 obligations, and governmental fines). *Id.* § 4.1(a)(ii)(B).

22 The third category of a qualifying tradeline is a pre-bankruptcy
23 revolving, open, or line of credit account that does not reflect a Chapter 7
24 bankruptcy account status and that does not have an indication that the account is
25 closed, a code indicating that the consumer was an “authorized user,” or an
26 indication of a specific Metro 2 code type that would make it non-dischargeable.
27 *Id.* § 4.1(a)(ii)(C).
28

1 The fourth category of a qualifying tradeline is a pre-bankruptcy
2 collection account that does not reflect a Chapter 7 bankruptcy account status and
3 that does not have an indication that the account is closed or an indication of a
4 specific Metro 2 code type that would make it non-dischargeable. *Id.*
5 § 4.1(a)(ii)(D).

6 On or before July 31, 2009, each Defendant will forward their list of
7 identified consumers to the Settlement Administrator, excluding any consumers
8 who have released any claims against that Defendant as a result of prior litigation or
9 otherwise and using commercially reasonable measures to avoid duplication within
10 its respective list. *Id.* § 4.1(d). The list will include information on the tradeline(s)
11 in one of the four qualifying tradeline categories (pre-bankruptcy civil judgment,
12 installment or mortgage loan, revolving account, or collection account), as well as
13 information as to whether or not a “Post-bankruptcy Hard Inquiry”⁶ or post-
14 bankruptcy employment inquiry appears on the consumer’s file and the date of such
15 an inquiry. *Id.* § 4.1(d)(iii-v). The Settlement Administrator will merge
16 Defendants’ lists into a single, combined list of identified 23(b)(3) Settlement Class
17 Members (the “Class List”) and will use commercially reasonable measures to
18 remove any duplication and resolve any conflicts relating to Consumers’ addresses.
19 *Id.* § 4.2.

20 2. Opt Out Procedure

21 A proposed 23(b)(3) Settlement Class Member may request to be
22 excluded from the 23(b)(3) Settlement Class by sending a written request for
23 exclusion to the Settlement Administrator no later than October 15, 2009. The opt-
24 out request must contain the Class Member’s original signature, current postal
25 address, and telephone number, the last four digits of the Class Member’s Social

26
27 ⁶ A “Post-bankruptcy Hard Inquiry” is an entry in a consumer’s file that contains a
28 record of a Defendant’s publication of the consumer’s Post-bankruptcy Credit
Report to a lender or other prospective creditor for purposes of evaluating a loan or
other credit application that was initiated by the consumer. *Id.* § 1.30.

1 Security number, and a specific statement that the Class Member wants to be
2 excluded from the 23(b)(3) Class. *Id.* § 5.2(a).

3 **B. Payments To The Class Members**

4 The Settlement provides relief for all Class members who have had a
5 credit report issued by a Defendant that contained alleged errors regarding debts
6 discharged in bankruptcy, as described in detail in the Settlement Agreement at §
7 7.7. Those Class members who believe that there have been one or more errors in
8 their credit reports regarding debts discharged in bankruptcy can apply for a fixed
9 or “Convenience” damage award, which will be an equal *pro rata* share of the
10 available Convenience Award Fund. *Id.* § 7.7(b). The amount will depend on the
11 number of claimants for the Convenience Awards and the number of claimants and
12 amount of the projected Actual Damage Awards, though the Convenience Award
13 Fund will be at least \$10 Million. *Id.* § 7.7(b)(i).

14 Those Class members who can certify that they have been damaged by
15 an error in their credit reports regarding debt discharged in bankruptcy, with respect
16 to a denial of employment, a mortgage loan or housing rental, and/or a credit card,
17 auto loan, other credit they applied for, or payment of a discharged debt to obtain
18 credit, can apply for an “Actual Damage Award.” *Id.* § 7.7(c). If Defendants’
19 records confirm a post-bankruptcy employment inquiry within two years of the date
20 indicated by the claimant on their Claim Form, or if there is otherwise no contrary
21 indication that an employment inquiry was made, the damage award to the
22 consumer will be \$750.00. *Id.* § 7.7 (c)(iii)(1). If Defendants’ records confirm a
23 hard inquiry consistent with a mortgage loan or other housing inquiry within six
24 months of the date on the Claim Form, the consumer will receive an award of
25 \$500.00. *Id.* § 7.7(c)(iii)(2). If Defendants’ records confirm a post-bankruptcy
26 hard inquiry within six months of the date indicated on the Claim Form, and the
27 consumer does not apply for an employment or mortgage/housing award, then the
28 consumer will receive an award of \$150.00. *Id.* § 7.7(c)(iii)(3). The Settlement

1 Claims Administrator will pay the Actual Damage Awards at the highest award
2 level for which the claimant is eligible. *Id.* § 7.7(c)(iv). The applicable award for
3 each category will be increased or decreased, *pro rata*, to reflect the number of
4 valid claims in each category and the funds available for distribution to the Actual
5 Damage Award claimants, including the addition of any unclaimed or uncashed
6 Convenience Awards. *Id.*; *see infra* III.C.

7 **C. Claims Administration**

8 The 23(b)(3) Settlement Class Members may submit claims by
9 October 15, 2009 by either registering for a claim on the Settlement Website or
10 returning the Claim Form via U.S. mail, provided they do not opt out (*see supra*
11 III.A.2). Settlement Agreement § 5.1(a). The Settlement Administrator will
12 subtract from the Settlement Fund the sum of all administrative and notice costs
13 and amounts paid pursuant to the award of attorneys' fees and costs. *Id.* § 7.7(b)(i).
14 The Settlement Administrator will then calculate the estimated amounts to be paid
15 for Actual Damage Awards by identifying the highest award to which each Actual
16 Damage Award Claimant may be entitled, multiplying the total number of such
17 claims in each of the three categories, and totaling the results for all categories. *Id.*
18 The remaining amount will be available for the Convenience Award Fund, which
19 will be at minimum \$10 million. *Id.* The Settlement Administrator will then pay
20 each Convenience Award Claimant an equal *pro rata* share of the Convenience
21 Award Fund, determined by the number of claimants for the Convenience Award.
22 *Id.* § 7.7(b)(ii). The Convenience Awards will be distributed within ninety (90)
23 days of the Effective Date of the Settlement. *Id.* § 7.7(b)(iii). Any unclaimed or
24 uncashed awards will expire after ninety (90) days and the amounts added to the
25 amounts available for payment of the Actual Damage Awards. *Id.*

1 **D. Timetable To Disburse Awards From Monetary Relief**
2 **Settlement Fund**

3 Following this Order, the parties shall jointly petition the Court to pay
4 the Settlement Administrator for the costs of notice and other administrative
5 expenses related to effecting the Notice Plan. *Id.* § 7.6(a). Within ninety (90) days
6 following the Effective Date of the Final Approval Order, all money remaining in
7 the Settlement Fund after the payment to 23(b)(3) Settlement Class Counsel for
8 Monetary Relief Fees will be paid to Claimants. *Id.* § 7.6(d).

9 **E. Class Representative Stipend**

10 The Settlement Agreement provides for \$5,000 incentive awards for
11 the Named Plaintiffs as Class Representatives in recognition of their service to and
12 efforts on behalf of the Class. *Id.* § 7.5. These incentive awards are in addition to
13 the relief the class representatives will be entitled to under the terms of the
14 Settlement. Throughout the Litigation, these Class Representatives have
15 participated in discovery, including extensive and probing depositions and
16 responding to interrogatories and requests for production of documents. They all
17 were kept informed of the Litigation as it developed and all were kept abreast of,
18 and signed off on, the proposed Settlement.

19 Enhancement awards like the ones requested here are appropriate.
20 Unlike unnamed Class members, who will enjoy the benefits of the
21 Representatives' efforts without taking any personal action, the named Class
22 Representatives made themselves available as witnesses at deposition and subjected
23 themselves to all the obligations of named parties, including participating in
24 discovery and following the Litigation. Small incentive awards, which serve as
25 premiums in addition to any claims-based recovery from the settlement, promote
26 the public policy of encouraging individuals to undertake the responsibility of
27 representative lawsuits. *See, e.g., In re Mego Financial Corp. Sec. Litig.*, 213 F.3d
28 454, 463 (9th Cir. 2000); *Staton v. Boeing*, 237 F.3d 938, 977 (9th Cir. 2003);

1 *Stevens v. Safeway, Inc.*, 2008 U.S. Dist. LEXIS 17119 (C.D. Cal. 2008); *see also*
2 *Manual for Complex Litig.*, § 21.62 n. 971 (4th ed. 2004) (incentive awards may be
3 “merited for time spent meeting with class members, monitoring cases, or
4 responding to discovery”).

5 **F. Attorneys’ Fees And Costs**

6 The Settlement Agreement provides that on or before October 19,
7 2009, 23(b)(3) Settlement Class Counsel will file an application or applications to
8 the Court, noticed to be heard at the Final Fairness Hearing, for approval of
9 attorneys’ fees and costs associated with this monetary relief Settlement.
10 Settlement Agreement § 7.3(a). 23(b)(3) Settlement Class Counsel will seek
11 approval of attorneys’ fees of an amount not to exceed 25% of the Settlement Fund
12 and for reimbursement of their costs and expenses. The enforceability of the
13 Settlement Agreement will not be contingent on the amount of attorneys’ fees or
14 costs awarded.

15 **G. Settlement Administration And Notice**

16 As set forth in the Settlement Agreement, all costs of notice and claims
17 administration will be invoiced by the Settlement Administrator and paid from the
18 Settlement Fund. *Id.* § 4.4(a). The parties will disclose the identity of the
19 Settlement Administrator and Notice Provider to the Court by June 30, 2009. The
20 Settlement Administrator and Notice Provider will administer the claims resolution
21 process, subject to review by Settlement Counsel. Their duties will include the
22 following: (1) issuing Class notice and claim forms; (2) calculating and issuing
23 settlement payments; and (3) responding to Class member inquiries regarding the
24 claims administration process. *Id.* §§ 4.3, 5.1. The parties have agreed to cooperate
25 with the Settlement Administrator and Notice Provider to ensure that they have all
26 of the information it needs to perform these tasks.

27 Within ten days following this Preliminary Approval Order, the parties
28 shall jointly petition the Court for approval to deposit the Settlement Fund with the

1 Registry of the Court. Within seven days after such approval, but in no event
2 before June 15, 2009, each Defendant shall cause to be deposited into the Registry
3 of the Court an amount equal to fifteen million dollars (\$15,000,000.00). *Id.* §
4 7.1(a). On or before August 31, 2009, the Settlement Administrator and Notice
5 Provider shall cause the Mail Notice and a Claim Form (submitted herewith as
6 Exhibit A to the Settlement Agreement) to be sent via U.S. mail to each Settlement
7 Class Member identified on the Class List. *Id.* §§ 4.3(b), (d). Additionally, the
8 Settlement Administrator and Notice Provider shall issue the Publication Notice
9 (Exhibit B to the Settlement Agreement) through a nationally distributed newspaper
10 or magazine and the Internet Notice (Exhibit C) through the Settlement Website.
11 *Id.* §§ 4.3(c), (e). The parties may also issue a joint press release. *Id.* § 10.1. The
12 Settlement Website shall provide generalized information, including the full text of
13 the Settlement Agreement, a Long-Form Notice, the Claim Form, the Preliminary
14 Approval Order, and the contact information for 23(b)(3) Settlement Class Counsel
15 and the Settlement Administrator. *Id.* § 4.3(c).

16 **IV. PROVISIONAL CERTIFICATION OF 23(b)(3) CLASS**

17 The Court finds that the proposed 23(b)(3) Settlement Class meets the
18 criteria for class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

19 **A. Plaintiffs' Claims Satisfy The Threshold Requirements For Class**
20 **Certification.**

21 The threshold prerequisites of Fed. R. Civ. P. 23(a) for maintaining a
22 class action have been met.

23 **1. The Class Is So Numerous That Joinder Is Impracticable.**

24 The Class consists of any consumer who: (i) was the subject of a credit
25 report issued by the Defendant after their Chapter 7 bankruptcy discharge and on or
26 after March 15, 2002 (or, for California residents in the case of TransUnion, after
27 May 12, 2001); and (ii) has at least one tradeline that fits into one of the four
28 different categories of qualifying tradelines corresponding to the manner in which

1 Defendants report on them: civil judgments, installment loans, credit card loans
2 (revolving credit), and collection accounts. Settlement Agreement § 4.1(a).
3 According to Defendants' records, there are millions of consumers who meet that
4 definition. As it is impracticable to join all those individuals in a single action, "the
5 numerosity requirement is certainly met in this case." *Acosta v. TransUnion, LLC*,
6 240 F.R.D. 564, 571 (C.D. Cal. 2007).

7 **2. There Are Questions Of Law Or Fact Common To**
8 **The Class.**

9 Rule 23(a) (2) requires the party seeking certification to show that
10 there are questions of law or fact common to the class. This rule "has been
11 construed permissively." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.
12 1998). It "does not mandate that each member of the class be identically situated."
13 *In re Napster*, 2005 U.S. Dist. LEXIS 11498, at *13; *see also Hanlon*, 150 F.3d at
14 1019. "The existence of shared legal issues with divergent factual predicates is
15 sufficient, as is a common core of salient facts coupled with disparate legal
16 remedies within the class." *Hanlon*, 150 F.3d at 1019; *see also Espinoza v.*
17 *Domino's Pizza, LLC*, 2009 U.S. Dist. LEXIS 31093, at *16 (C.D. Cal. Feb. 18,
18 2009).

19 In this case, the claims of all Class members arise out of the same
20 common core of facts because, as this Court noted in *Acosta*, "[t]he same alleged
21 conduct of Defendants forms the basis of each of the plaintiffs' claims, particularly
22 that [Defendants] created standardized practices and procedures for reporting
23 accounts discharged in Chapter 7 bankruptcy." *Acosta*, 240 F.R.D. at 571.
24 Likewise, Plaintiffs' claims all raise the same legal issues, namely whether
25 Defendants "maintain reasonable procedures to assure maximum possible accuracy
26 in reporting discharged accounts" in accordance with the standard set forth in
27 section 1681e(b) of the FCRA. *Id.*

1 Furthermore, the Settlement addresses this Court's concern, expressed
2 in my Tentative Order Denying Plaintiffs' Motion for Class Certification, that some
3 Class members may not have been harmed by Defendants' credit reporting
4 procedures. While Class members "would not be required to prove causation or
5 actual damages in order" to obtain statutory damages under the FCRA, as this Court
6 held in *Acosta*, 240 F.R.D. at 579, the Settlement's claims process allows for Class
7 members who believe they have been harmed by alleged errors in their credit
8 reports to certify the type and approximate date of the harm they suffered.
9 Settlement Agreement § 7.7(c). Those Class members who believe they had errors
10 that are presumptively harmful but cannot certify the type of harm will still get a
11 fixed damage award from the Settlement. *Id.* § 7.7(b).

12 3. **The Claims Of The Named Plaintiffs Are Typical Of Those**
13 **Of All Other Class Members.**

14 "Under the rule's permissive standards, representative claims are
15 'typical' if they are reasonably co-extensive with those of absent class members."
16 *Hanlon*, 150 F.3d at 1020. This standard is satisfied when "other members have the
17 same or similar injury," when "the action is based on conduct which is not unique
18 to the named plaintiffs," and when "other class members have been injured by the
19 same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th
20 Cir. 1992); *see also Espinoza*, 2009 U.S. Dist. LEXIS 31093 at *24 (typicality
21 achieved when each member's claim arises from same course of events and each
22 class member makes similar legal arguments to prove defendant's liability)
23 (internal quotations and citations omitted). If the claims arise from a similar course
24 of conduct and share the same legal theory, factual differences, including
25 differences in the amount of damages, will not defeat typicality. *Mullen v.*
26 *Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999); *accord Barnes v.*
27 *American Tobacco Co.*, 161 F.3d 127, 141 (3d Cir. 1998).

1 Here, the named Plaintiffs and the Class members they seek to
2 represent have suffered substantially the same injury – violation of their statutory
3 right to accuracy in the reporting of information about their financial affairs.
4 Further, far from being unique to the named Plaintiffs, the conduct precipitating
5 their injuries derives from the same course of conduct that has given rise to the
6 injuries suffered by all other Class members – namely, Defendants’ deficient
7 procedures for reporting the status of pre-bankruptcy debt. Finally, the claims of
8 the named Plaintiffs and those of other Class members are based on the exact same
9 legal theories. Accordingly, the claims of the named Plaintiffs meet the typicality
10 prerequisite set forth in Fed. R. Civ. P. 23(a). *Acosta*, 240 F.R.D. at 571 (“The
11 named plaintiffs’ claims are . . . typical of those of the remainder of the class in
12 regards to the central legal issue, namely whether TransUnion and Equifax maintain
13 reasonable procedures to assure maximum possible accuracy in reporting
14 discharged accounts.”); *see also White*, 2002 U.S. Dist. LEXIS 26610, at *41.

15 **4. The Plaintiffs Adequately Represent The Class.**

16 The final threshold prerequisite for class certification is that the named
17 plaintiffs be able fairly and adequately to protect the interests of the class. This
18 determination turns on just two questions: “(1) [d]o the representative plaintiffs
19 and their counsel have any conflicts of interest with other class members, and
20 (2) will the representative plaintiffs and their counsel prosecute the action
21 vigorously on behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th
22 Cir. 2003); *see also Hanlon*, 150 F.3d at 1020. “The burden is on the defendant[] to
23 demonstrate that the representation will be inadequate.” *Johns v. Rozet*, 141 F.R.D.
24 211, 217 (D.D.C. 1992); *see also Lewis v. Curtis*, 671 F.2d 779, 788 (3d Cir. 1982);
25 *Trautz v. Weisman*, 846 F. Supp. 1160, 1167 (S.D.N.Y. 1994).

26 Both components of the “adequacy” test are met here. First, Plaintiffs
27 do not have any interests antagonistic to those of the proposed Class and are
28 prepared to pursue this Litigation vigorously to redress the wrongs Defendants have

1 perpetrated. The proposed Plaintiffs and the proposed Class members share an
2 identical interest in establishing Defendants' liability for failing to employ
3 reasonable reporting procedures to assure maximum possible accuracy in their
4 reporting of pre-bankruptcy debts. To establish liability, all members of the
5 proposed Class seek the same findings on the common questions of law and fact.
6 Like the members of the Class they seek to represent, the named Plaintiffs have
7 been adversely affected by Defendants' alleged unlawful reporting procedures and
8 have every incentive to vigorously pursue their claims.

9 Second, Plaintiffs are represented by counsel who are "qualified,
10 experienced and able to vigorously conduct the proposed litigation' on behalf of the
11 class.'" *In re Quintus Secs. Litig.*, 148 F. Supp. 2d 967, 972 (N.D. Cal. 2001).
12 Plaintiffs' counsel have formed an Executive Committee to manage this Litigation,
13 which is led by co-lead counsel Michael W. Sobol of Lieff Cabraser and
14 Michael A. Caddell of Caddell & Chapman. *See* Declaration of Michael W. Sobol
15 in Support of Plaintiffs' Motion to Certify Class, dated December 21, 2007 (Docket
16 No. 195), and Declaration of Michael A. Caddell in Support of Plaintiffs' Motion
17 for Class Certification, dated February 14, 2007 (Docket No. 66). Similarly, lead
18 counsel for the *Acosta/Pike* plaintiffs, Lee A. Sherman of the law firm of Callahan,
19 McCune & Willis, has participated in the negotiations and mediation leading up to
20 the Settlement, and is one of the 23(b)(3) Settlement Class Counsel moving for the
21 Court's approval of the Settlement.

22 The 23(b)(3) Settlement Class Counsel have drawn on their
23 considerable experience and human resources to zealously represent the proposed
24 Class in this Litigation. Likewise, the 23(b)(3) Settlement Class Counsel are
25 committed to devoting the financial resources necessary to litigate the case to a
26 successful resolution. Indeed, the 23(b)(3) Settlement Class Counsel have already
27 expended considerable time and effort in researching the legal and factual issues
28 relevant to this Litigation, evaluating potential claims and defenses, drafting

1 pleadings, conducting discovery, successfully opposing the adequacy and fairness
2 of a prior settlement, successfully concluding the settlement for comprehensive and
3 complete injunctive relief, and successfully concluding the present settlement for
4 monetary relief. Where, as here, proposed class counsel “include some of the most
5 experienced lawyers in the United States in the prosecution of . . . class actions”
6 and have demonstrated that they are “ready, willing and able to commit the
7 resources necessary to litigate the case vigorously,” the adequate representation
8 requirement is more than satisfied. *In re NASDAQ Market-Makers Antitrust Litig.*,
9 169 F.R.D. 493, 515 (S.D.N.Y. 1996).

10 **B. Plaintiffs’ Monetary Relief Claims Satisfy The Requirements For**
11 **Class Certification For Purposes of Settlement Under**
12 **Rule 23(b)(3).**

13 This action is well-suited for certification under Rule 23(b)(3) because,
14 particularly in the context of this Settlement, questions common to the Class
15 members predominate over questions affecting only individual Class members, and
16 the class action device provides the best method for the fair and efficient resolution
17 of the Class’s claims. Indeed, Defendants do not oppose provisional class
18 certification for the purpose of effectuating the proposed Settlement. When
19 addressing the propriety of class certification, the Court should take into account
20 the fact that, in light of the settlement, trial will now be unnecessary, and that the
21 manageability of the Class for trial purposes is not relevant to the Court’s inquiry.
22 *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *Hanlon*, 150 F.3d at
23 1021-23.

24 A class action is appropriate under 23(b)(3) if “questions of law or fact
25 common to the members of the class predominate over any questions affecting only
26 individual members” Fed. R. Civ. P. 23(b)(3). “When common questions
27 present a significant aspect of the case and they can be resolved for all members of
28 the class in a single adjudication,” there is clear justification for class treatment.
Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands,

1 *Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, as the Settlement is structured,
2 common questions of law and fact overwhelm individual issues. Thus, the
3 predominance requirement is satisfied.

4 Certification under Rule 23(b)(3) will allow class members to opt out
5 of the Settlement and preserve their right to seek damages independently. *See*
6 *Brown v. Title Ticor Ins. Co.*, 982 F.2d 386, 392 (9th Cir. 1992). This approach
7 protects putative class members' due process rights, and is consistent with the
8 Supreme Court's decision in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), and
9 the Ninth Circuit's decision in *Brown*, which explain that due process requires an
10 opportunity to opt out of significant monetary relief. *Ortiz*, 527 U.S. at 846-48;
11 *Brown*, 982 F.2d at 392.

12 The Court should certify the Class if it finds that a "class action is
13 superior to other available methods for fair and efficient adjudication of the
14 controversy." Fed. R. Civ. P. 23(b)(3). If alternate procedures "reveal[] no other
15 realistic possibilities, this [superiority] portion of Rule 23(b)(3) has been satisfied."
16 *Local Joint Executive Bd.*, 244 F.3d at 1163 (internal quotes and cites omitted).
17 Class treatment here will facilitate the favorable resolution of all Class members'
18 claims. Given the large numbers of Class members and the multitude of common
19 issues present, the class device is also the most efficient and fair means of
20 adjudicating these claims. Class treatment in the settlement context is superior to
21 multiple individual suits or piecemeal litigation because it greatly conserves judicial
22 resources and promotes consistency and efficiency of adjudication. *See Hanlon*,
23 150 F.3d at 1023. For these reasons, the superiority requirement is satisfied.

24 **C. The 23(b)(3) Settlement Class**

25 Accordingly, the Court hereby provisionally certifies for settlement
26 purposes only the following class pursuant to Fed. R. Civ. P. 23:

27 All Consumers (as defined by the Settlement Agreement) who have
28 received an order of discharge pursuant to Chapter 7 of the United States

1 Bankruptcy Code and who, any time between and including March 15, 2002, and
2 the present (or, for California residents in the case of TransUnion, any time between
3 and including May 12, 2001 and the present), have been the subject of a Post-
4 bankruptcy Credit Report issued by a Defendant in which one or more of the
5 following appeared:

- 6 a. A Pre-bankruptcy Civil Judgment that was reported as
7 outstanding (i.e., it was not reported as vacated, satisfied, paid,
8 settled or discharged in bankruptcy) and without information
9 sufficient to establish that it was, in fact, excluded from the
10 bankruptcy discharge;
- 11 b. A Pre-bankruptcy Installment or Mortgage Loan that was
12 reported as delinquent or with a derogatory notation (other than
13 "discharged in bankruptcy," "included in bankruptcy" or similar
14 description) and without information sufficient to establish that
15 it was, in fact, excluded from the bankruptcy discharge;
- 16 c. A Pre-bankruptcy Revolving or Open Account that was reported
17 as delinquent or with a derogatory notation (other than
18 "discharged in bankruptcy," "included in bankruptcy" or similar
19 description) and without information sufficient to establish that
20 it was, in fact, excluded from the bankruptcy discharge; and/or
21 d. A Pre-bankruptcy Collection Account that remained in
22 collection after the Bankruptcy Date.

23 Settlement Agreement at § 1.48. Excluded from the Class are: (i) all persons who
24 timely and validly request exclusion from the Class; (ii) all Consumers who would
25 qualify for membership in the "23(b)(3) Settlement Class" based solely on a Post-
26 bankruptcy Credit Report for which the Consumer has released all claims as to the
27 issuing Defendant; (iii) Defendants' officers, directors, and employees; (iv)
28 Defendants' attorneys; (v) Plaintiffs' attorneys; and (vi) myself and the members of

1 my immediate family.

2 V. **THE CRITERIA FOR PRELIMINARY SETTLEMENT APPROVAL**
3 **ARE MET.**

4 As long as the “preliminary evaluation of the proposed settlement does
5 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
6 unduly preferential treatment of class representatives or of segments of the class, or
7 excessive compensation for attorneys, and appears to fall within the range of
8 possible approval,” the Court should preliminarily approve the settlement.
9 *Newberg* § 11.25 (quoting *Manual for Complex Litig., Third* (FJC 1995)).

10 A proposed settlement may be finally approved by the trial court if it is
11 determined to be “fundamentally fair, adequate, and reasonable.” *Class Plaintiffs*,
12 955 F.2d at 1276. While consideration of the requirements for *final* approval is
13 unnecessary at this stage, all of the relevant factors weigh in favor of the Settlement
14 proposed here. In affirming the settlement approved by the trial court in *Class*
15 *Plaintiffs*, the Ninth Circuit noted that it “need not reach any ultimate conclusions
16 on the contested issues of fact and law which underlie the merits of the dispute, for
17 it is the very uncertainty of outcome in litigation and avoidance of wasteful and
18 expensive litigation that induce consensual settlements.” *Id.* at 1291 (internal
19 quotation and citation omitted). The Court’s ultimate determination should balance
20 “the strength of plaintiffs’ case; the risk, expense, complexity, and likely duration
21 of further litigation; the risk of maintaining class action status throughout the trial;
22 the amount offered in settlement; the extent of discovery completed, and the state of
23 the proceedings; the experience and views of counsel . . . and the reaction of the
24 class to the proposed settlement.” *Id.* (citing *Officers for Justice*, 688 F.2d at 625).
25 The relative degree of importance to be attached to any particular factor will depend
26 upon and be dictated by the nature of the claims advanced, the types of relief
27 sought, and the unique facts and circumstances of each case. *Nat’l Rural*
28

1 *Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citing
2 *Officers for Justice*, 688 F.2d at 625).

3 **1. The Settlement Provides Substantial Relief for**
4 **Class Members.**

5 The Settlement provides relief for all Class members who have had a
6 credit report issued by a Defendant that contained errors regarding debts discharged
7 in bankruptcy, as described in detail in III., *supra*, and in the Settlement Agreement
8 at § 7.7. Those Class members who believe that there have been one or more errors
9 in their credit reports regarding debt discharged in bankruptcy can apply for a fixed
10 or “Convenience” damage award, which will be an equal *pro rata* share of the
11 Available Convenience Award Fund. Settlement Agreement § 7.7(b).

12 Those Class members who can certify that they have been damaged by
13 an error in their credit reports regarding debt discharged in bankruptcy, with respect
14 to a denial of employment, a mortgage loan or housing rental, and/or a credit card,
15 auto loan, other credit they applied for, or payment of a discharged debt to obtain
16 credit, can apply for an “Actual Damage Award.” *Id.* § 7.7(c). If Defendants’
17 records confirm a post-bankruptcy employment inquiry within two years of the date
18 indicated by the claimant on their Claim Form, or if there is otherwise no contrary
19 indication that an employment inquiry was made, the damage award to the
20 consumer will be \$750.00. *Id.* § 7.7 (c)(iii)(1). If Defendants’ records confirm a
21 hard inquiry consistent with a mortgage loan or other housing inquiry, the
22 consumer will receive an award of \$500.00. *Id.* § 7.7(c)(iii)(2). If Defendants’
23 records confirm a post-bankruptcy hard inquiry, and the consumer does not apply
24 for an employment or mortgage/housing award, then the consumer will receive an
25 award of \$150.00. *Id.* § 7.7(c)(iii)(3). The Settlement Claims Administrator will
26 pay the Actual Damage Awards at the highest award level for which the claimant is
27 eligible. *Id.* § 7.7(c)(iv).

28 Class members may submit a simple claim form to request the relief

1 available under the Settlement. Those Class members requesting Actual Damage
2 Awards must provide an approximate date (month and year) of the relevant
3 transaction(s) so that their claims can be verified. *Id.* § 4.3(d).

4 2. **The Risks Of Continued Litigation And Trial Favor**
5 **Settlement.**

6 The Settlement provides Class members with benefits they would not
7 enjoy if the case were to proceed to trial. First, the Settlement provides Class
8 members with prompt and efficient relief. Proceeding to trial would add years to
9 the resolution of this case and could be further delayed by appeals.

10 Second, the Settlement enables Class members to avoid the risks of
11 going to trial. The factual and legal issues in this action are complex, and the trial
12 of Plaintiffs' claims under the FCRA and related state laws would require
13 substantial preparation and ultimately involve the presentation of dozens of
14 witnesses and numerous experts. Although Plaintiffs and the Class believe their
15 claims have merit, they also recognize that they would face significant legal,
16 factual, and procedural obstacles to recovering damages on their claims. Where, as
17 here, the Court issued a tentative ruling on January 26, 2009 denying Plaintiffs'
18 Motion for Class Certification pursuant to Fed. R. Civ. P. 23(b)(3) and directed the
19 parties to make a final attempt to settle the Litigation, class certification could pose
20 some difficulties. The Defendants deny that they willfully or negligently violated
21 FCRA or related state laws, and they would challenge Plaintiffs' claims at every
22 stage of the Litigation. Among other things, as evidence of their good faith, they
23 would point to the fact that they have completely revised the challenged procedures
24 independently of any monetary settlement. The outcome of a trial is uncertain. The
25 Settlement ensures that Class members will be granted relief if they submit timely
26 qualified claims.

27 Third, the Settlement negates the extraordinary time and expense that
28 would be incurred if this case were to proceed to trial. The Settlement commits

1 Defendants to each pay \$15 million into a Settlement Fund to be distributed among
2 the Class according to their claims. Even if the Class were successful in winning at
3 trial, it would not see any relief until after many potential appeals and many years.
4 The results of a Settlement will benefit the parties and the court system.

5 **3. The Recommendations Of Experienced Counsel Favor**
6 **Approval Of The Settlement.**

7 The judgment of experienced counsel regarding the settlement is
8 entitled to great weight. *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F.
9 Supp. 819, 822 (D. Mass 1987); *Linney v. Cellular Alaska P'ship*, 1997 WL
10 450064, at *5 (N.D. Cal. 1997); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15,
11 18 (N.D. Cal. 1980). "The recommendations of plaintiffs' counsel should be given
12 a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622
13 (N.D. Cal. 1979). Here, counsel for both parties endorse the settlement as fair,
14 adequate, and reasonable.

15 Settlement Counsel have extensive experience in prosecuting and
16 litigating consumer class action cases and FCRA and bankruptcy actions.
17 Settlement Counsel have conducted extensive investigation of and discovery in this
18 case. The fact that qualified and well-informed counsel endorse the settlement as
19 being fair, reasonable, and adequate weighs heavily in favor of this Court's
20 approval of the settlement.

21 **4. The Court Believes The Settlement Is In The Best Interests**
22 **Of The Class.**

23 The Plaintiffs have actively participated in this Litigation by staying
24 apprised of developments, producing documents, responding to discovery and
25 providing sworn declaration and deposition testimony. Moreover, they have been
26 kept informed about the progress of settlement negotiations and mediation and the
27 proposed Settlement. The proposed Plaintiffs have been informed of the nature of
28

1 the Settlement and believe that this Court's approval of it would serve the best
2 interests of the class.

3 The Plaintiffs represent the interests of the entire Class in asking the
4 Court to approve this Settlement. The claims of all of the original *White* plaintiffs
5 were consolidated with the claims of Jose Hernandez via the *White/Hernandez*
6 Second Amended Consolidated Class Action Complaints against each Defendant,
7 and the claims of the Acosta plaintiffs were related to *White/Hernandez*. Therefore,
8 even if the *White* plaintiffs do not agree with the Settlement⁷, Jose Hernandez,
9 Kathryn Pike, Robert Randall, and Bertram Robison seek to resolve all of the
10 claims in the complaints against Defendants on behalf of the Class. The Settlement
11 will resolve and release all claims of the Plaintiffs and 23(b)(3) Settlement Class
12 Members as they relate to the reporting of debts discharged in bankruptcy.
13 Settlement Agreement § 1.38.

14 The Ninth Circuit does not require that all named plaintiffs agree with
15 a settlement in order for it to be approved. *Officers for Justice v. Civil Serv.*
16 *Comm'n*, 688 F.2d 615, 631 (9th Cir. 1982). Numerous courts have held that class
17 counsel has a duty to do what is in the best interests of the class, even if some class
18 representatives disagree. *See, e.g., Officers for Justice*, 688 F.2d at 631; *Parker v.*
19 *Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982) (affirming approval of class
20 settlement opposed by all but one of eleven named plaintiffs and recognizing "that
21 the duty owed by Class Counsel is to the entire class and is not dependent on the
22 special desires of the named plaintiffs"); *Kincade v. Gen. Tire and Rubber Co.*, 635
23 F.2d 501, 508 (5th Cir. 1981) (affirming class settlement over opposition of five of
24 the six named plaintiffs and finding that cases holding that an attorney cannot settle
25 individual client's case without authorization of client are inapplicable to class

26 ⁷ The 23(b)(3) Settlement Class Counsel have informed the Court that they have
27 only been able to confirm support for the Settlement from Jose Hernandez, Robert
28 Randall, and Bertram Robison. Though Settlement Class Counsel have not had an
opportunity to meet with all of the *White* Plaintiffs, they have been advised that
they oppose the Settlement.

actions “because of the unique nature of the attorney-client relationship in a class action”); *Maywalt v. Parker & Parsley Petroleum Co.*, 864 F. Supp. 1422, 1430 (S.D.N.Y. 1994), *aff’d*, 67 F.3d 1072 (2d Cir. 1995) (approving settlement opposed by four out of five class representatives because it does not serve best interests of Rule 23 “[t]o empower the Class Representatives with what would amount to an automatic veto over the Proposed Settlement”); *Rodriguez v. West Publishing Corp.*, 2007 U.S. Dist. LEXIS 74849, at *49-50 (C.D. Cal. Sept. 10, 2007) (citing above cases).

Therefore, it is this Court’s duty to approve the Settlement if it determines it is in the best interests of the class. *Maywalt v. Parker*, 67 F.3d 1072, 1078 (2d Cir. 1995) (“[t]he ultimate responsibility to ensure that the interests of class members are not subordinated to the interests of either the class representatives or class counsel rests with the district court”).⁸ Moreover, the Court is not required to give any special deference to Objecting Plaintiffs. *Rodriguez*, 2007 U.S. Dist. LEXIS 74849, at *51 (C.D. Cal. Sept. 10, 2007). Accordingly, this Court preliminary approves the Settlement as being in the best interests of the Class.

B. The Court Itself Has Urged The Parties To Reach A Settlement.

In the Court’s rulings and comments to counsel, this Court has urged the parties to reach a settlement. The Court first urged the parties to proceed to mediation on or about August 15, 2007. After the parties entered into an Injunctive Relief Settlement Agreement on or about April 3, 2008, which was approved by the Court on August 19, 2008, the Court continued to encourage the parties to try to

⁸ The 23(b)(3) Settlement Counsel also have a duty to do what they believe is in the best interests of the class, even if the named plaintiffs do not agree. *See, e.g., Fleury v. Richemont NorthAmerica, Inc.*, 2008 U.S. Dist. LEXIS 64521, at *44 (N.D. Cal. July 3, 2008) (citing *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995) (stating that, “[b]eyond their ethical obligations to their clients, class attorneys, purporting to represent a class, also owe the entire class a fiduciary duty once the class complaint is filed”); *In re McKesson HBOC, Inc. Secs. Litig.*, 126 F. Supp. 2d 1239, 1245 (N.D. Cal. 2000) (noting that “lead counsel owes a generalized duty to unnamed class members”)).

1 settle the case. The parties' efforts to resolve the monetary relief portion of the
2 Litigation then resumed with several mediation sessions, but without success.

3 On January 26, 2009, the parties appeared for a hearing on Plaintiffs'
4 Motion for Class Certification of a 23(b)(3) damages class. Prior to the scheduled
5 hearing, the Court issued a tentative ruling denying the motion, decided not to hear
6 the Motion at that time, and directed the parties to make a final attempt to settle the
7 Litigation. When the parties did not reach an agreement after an additional
8 mediation session with mediator Randall Wulff, the Court ordered a mandatory
9 settlement conference on February 5, 2009, whereby a settlement was reached with
10 two defendants (which the third defendant joined two weeks later). Thus, on
11 numerous occasions, the Court strongly urged the parties to reach a settlement
12 agreement.

13 Where, as here, a proposed class settlement has been reached after
14 meaningful discovery and arm's length bargaining, conducted by capable counsel,
15 and the proponents of the settlement are counsel experienced in similar litigation,
16 the settlement should be entitled to a presumption of fairness. *Newberg* § 11.41;
17 *Manual for Complex Litigation, Second*, § 30.41 at 237. These factors, and the
18 terms of the settlement offering damage awards to all Class members, demonstrate
19 that the Settlement is fair, adequate, and reasonable.

20 **C. The Proposed Notice Program Is Constitutionally Sound.**

21 "Rule 23(e)(1)(B) requires the court to 'direct notice in a reasonable
22 manner to all class members who would be bound by a proposed settlement,
23 voluntary dismissal, or compromise' regardless of whether the class was certified
24 under Rule 23(b)(1), (b)(2), or (b)(3)." *Manual for Complex Litig.*, § 21.312.
25 Many of the same considerations govern both certification and settlement notices.
26 In order to protect the rights of absent class members, the Court must provide the
27 best notice practicable to class members. *See Phillips Petroleum Co. v. Shutts*,
28 472 U.S. 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-175

(1974). "Rule 23 . . . requires that individual notice in 23(b)(3) actions be given to class members who can be identified through reasonable effort. Those who cannot be readily identified must be given the 'best notice practicable under the circumstances.'" *Manual for Complex Litig.*, § 21.311. According to the *Manual*, the settlement notice should:

- Define the class;
- Describe clearly the options open to the class members and the deadlines for taking action;
- Describe the essential terms of the proposed settlement;
- Disclose any special benefits provided to the class representatives;
- Provide information regarding attorneys' fees;
- Indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to or opting out of the settlement;
- Explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set out those variations;
- Provide information that will enable class members to calculate or at least estimate their individual recoveries; and
- Prominently display the address and phone number of class counsel and the procedure for making inquiries.

§ 21.312.

The proposed forms of Notice, attached as Exhibits A-C to the Settlement Agreement, satisfy all of criteria above. The Notice Plan provides for a large mailing to known Class members and a one-time publication in a nationally distributed newspaper or magazine. Settlement Agreement §§ 4.3(b), (e). A press release describing the Settlement may be issued by the parties. *Id.* § 10.1. The Notice and other documents will also be available online at a Settlement Website established by the Settlement Administrator. *Id.* § 4.3(c). The Settlement Website will be registered with Google to ensure that it is easy to find on the Internet. *Id.*

D. Scheduling Final Approval Hearings Is Appropriate.

The last step in the Settlement approval process is a final fairness

1 hearing at which the Court may hear all evidence and argument necessary to make
2 its Settlement evaluation. Proponents of the Settlement may explain the terms and
3 conditions of the Settlement, and offer argument in support of final approval. In
4 addition, Settlement Class members, or their counsel, may be heard in support of or
5 in opposition to the Settlement Agreement. The Court will determine after the final
6 approval hearing whether the Settlement should be approved, and whether to enter a
7 final order and judgment under Rule 23(e). The Court sets the date of November 9,
8 2009, at 8:30 a.m., for a hearing on final approval.

9 **VI. CONCLUSION**

10 The Court concludes that Plaintiffs have satisfied all of the requirements for
11 Preliminary Approval of the proposed Class Action Settlement and conditional
12 certification of the Settlement Class. Accordingly, it is hereby ORDERED as
13 follows:

14 1. In the actions against Experian, Equifax and TransUnion, the
15 following "23(b)(3) Settlement Class" is conditionally certified for purposes of
16 settlement under Fed. R. Civ. P. 23(b)(3) as to (i) willful and/or negligent violation
17 of Section 1681e(b) of the FCRA and its California counterpart, Cal. Civ. Code
18 Section 1785.14(b), for failure to maintain reasonable procedures to assure
19 maximum possible accuracy; (ii) willful and/or negligent violation of Section 1681i
20 of the FCRA and its California counterpart, Cal. Civ. Code Section 1785.16, for
21 failure to reasonably investigate Consumer disputes regarding the status of the
22 discharged accounts; and (iii) violation of California's Unfair Competition law,
23 Bus. & Prof. Code section 17200, *et seq.*:

24 All consumers who have received an order of discharge pursuant
25 to Chapter 7 of the United States Bankruptcy Code and who, any
26 time between and including March 15, 2002, and the present (or,
27 for California residents in the case of TransUnion, any time
28 between and including May 12, 2001 and the present), have been

1 the subject of a Post-bankruptcy Credit Report issued by a
2 Defendant in which one or more of the following appeared:

- 3 a. A Pre-bankruptcy Civil Judgment that was reported
4 as outstanding (i.e., it was not reported as vacated,
5 satisfied, paid, settled or discharged in bankruptcy) and
6 without information sufficient to establish that it was, in
7 fact, excluded from the bankruptcy discharge;
- 8 b. A Pre-bankruptcy Installment or Mortgage Loan that
9 was reported as delinquent or with a derogatory notation
10 (other than "discharged in bankruptcy," "included in
11 bankruptcy" or similar description) and without
12 information sufficient to establish that it was, in fact,
13 excluded from the bankruptcy discharge;
- 14 c. A Pre-bankruptcy Revolving Account that was
15 reported as delinquent or with a derogatory notation (other
16 than "discharged in bankruptcy," "included in bankruptcy"
17 or similar description) and without information sufficient to
18 establish that it was, in fact, excluded from the bankruptcy
19 discharge; and/or
- 20 d. A Pre-bankruptcy Collection Account that remained
21 in collection after the Bankruptcy Date.

22 Excluded from the Class are: (i) all persons who timely and validly request
23 exclusion from the Class; (ii) all Consumers who would qualify for membership in
24 the "23(b)(3) Settlement Class" based solely on a Post-bankruptcy Credit Report
25 for which the Consumer has released all claims as to the issuing Defendant; (iii)
26 Defendants' officers, directors, and employees; (iv) Defendants' attorneys;
27 (v) Plaintiffs' attorneys; and (vi) myself and the members of my immediate family.
28

1 2. Plaintiffs Jose Hernandez, Robert Randall, Bertram Robison,
2 and Kathryn Pike are designated and appointed as representatives for the Settlement
3 Class.

4 3. The law firms of Lieff Cabraser Heimann & Bernstein, LLP,
5 Caddell & Chapman, National Consumer Law Center, Consumer Litigation
6 Associates, P.C., Weller Green, Toups & Terrell, L.L.P., and Callahan McCune and
7 Willis are appointed as 23(b)(3) Settlement Class Counsel.

8 4. The Court grants Preliminary Approval to the Settlement
9 Agreement, as set forth in Exhibit 1.

10 5. The 23(b)(3) Settlement Class Counsel shall disclose the
11 identify of the Settlement Administrator and Notice Provider to the Court by
12 June 30, 2009.

13 6. Each Defendant shall provide the Settlement Administrator with
14 their respective lists of identified 23(b)(3) Settlement Class Members by July 31,
15 2009.

16 7. The Court approves of the forms of Notice, attached to the
17 Settlement Agreement as Exhibits A-C, and the notice distribution and publication
18 program set forth in the Settlement Agreement.

19 8. The Settlement Administrator shall cause the Mail Notice to be
20 sent to each identified 23(b)(3) Settlement Class Member by August 31, 2009, and
21 shall establish an Internet web site no later than five days prior to the mailing of the
22 Mail Notice. Between August 31, 2009 and September 30, 2009, the Settlement
23 Administrator shall cause the Publication Notice to be published.

24 9. The deadline for a class member to submit a claim, opt out, or
25 object to the Settlement shall be October 15, 2009.

26 10. All responses to objections shall be filed by October 30, 2009.

27
28

1 11. Any counsel for plaintiffs who wish to apply for an award of
2 fees and costs for efforts made in connection with the Injunctive Relief Settlement
3 must do so on or before October 19, 2009.

4 12. A Final Fairness Hearing shall be set for November 9, 2009 at
5 8:30 a.m.

6
7
8 IT IS SO ORDERED,

9
10 May 7, 2009

David O. Carter

HON. DAVID O. CARTER